

## **SBA proposes major revisions to small business contracting program**

The Small Business Administration on Wednesday proposed some of the most comprehensive changes to its 8(a) small and disadvantaged business contracting program in more than a decade.

The [proposed revisions](#), published in the Federal Register, would make significant changes to 8(a) eligibility and income requirements and affect how large firms benefit from small business contracts.

"We are trying to make sure that the overarching benefits of the 8(a) program flow to the people they are intended to," said Joe Jordan, associate administrator for government contracting business development at SBA.

One of the most significant changes would close a regulatory loophole that allows multibillion-dollar corporations to partner with Alaska native corporations -- which are considered permanent small disadvantaged businesses -- on contracts in which the larger firm does virtually all of the work.

Unlike other 8(a) participants, Alaska native corporations can win sole-source contracts of any value. ANCs also can create joint ventures with non-8(a) firms of any size to compete for work. These joint ventures are considered small businesses eligible to receive high-value contracts without competition.

Joint ventures involving ANCs have been heavily criticized as primarily benefiting larger companies while limiting competition from small businesses -- especially when the large business acts as a subcontractor to the prime joint venture contractor. In those circumstances, often only 20 percent to 30 percent of the work on the contract is performed by the small business, the notice said.

The proposed rule would not allow large firms in joint ventures to act as subcontractors to 8(a) firms on sole-source contracts. The 8(a) firms would be required to perform at least 40 percent of the work on joint ventures.

"SBA believes this rule is needed to prevent large businesses as well as other non-8(a) firms from being able to reap the benefits of sole-source contracts intended for tribally owned or ANC-owned 8(a) participants," the rule said. "When these large contracts are awarded on a sole-source basis to joint ventures, the contracts are not available for competition among other 8(a) firms."

The SBA consulted with ANCs and tribally owned firms in developing the rule change, Jordan said.

The agency might consider other measures, including banning joint ventures on high-value sole source awards or extending the proposed joint venture subcontractor prohibition to all 8(a) contracts, the notice said.

During the past five years, an estimated 62 joint ventures between tribally or ANC-owned firms and non-8(a) companies were awarded contracts above the competitive threshold amounts of \$3.5 million, or \$5.5 million for manufacturing, the rule said. Those contracts totaled \$2.5 billion, with roughly half trickling down to the non-8(a) companies. In many of these instances, the non-8(a) firm also acted as a subcontractor, the SBA said.

Small businesses owned by tribes, ANCs or native Hawaiian organizations will now be required to submit information to SBA showing how their 8(a) participation has benefited their local communities, including funding cultural programs and providing employment assistance, jobs, scholarships and internships, Jordan said.

Other proposed changes would clarify the size, income and familial determinations needed to enter the 8(a) program. SBA is considering excluding individual retirement accounts from the strict net worth calculations that are used to determine eligibility for the program. Such a change would allow one to two more companies to enter into the program annually, the notice said.

"SBA has found that the inclusion of IRAs and other retirement accounts in the calculation of an individual's net worth does not serve to disqualify wealthy individuals from participation in the program," the rule said. "Rather it has worked to make middle and lower income individuals ineligible to the extent they have invested prudently in accounts to ensure income at a time in their lives that they are no longer working."

To ensure that individuals do not abuse the rule by hiding assets in their retirement accounts, participants would have to show that those funds could not be withdrawn without a significant penalty, the rule said.

SBA proposed that individuals not be considered economically disadvantaged if their adjusted gross income at the time of an 8(a) application is more than \$200,000 or if the fair market value of their assets exceeds \$3 million. To remain in the program, participants must show that their adjusted gross income during the two preceding years did not exceed \$250,000 and that their total assets were not more than \$4 million.

SBA also proposed easing the restriction preventing family members of 8(a) participants from entering the program. Relatives of program participants could gain access if they operate in different industries, are qualified to run their firms and are judged not to be a front for their family member's company. Other proposed rule changes would:

- Allow joint ventures to win as many as three contracts during a two-year period. Under the current rule, joint ventures are limited to just three bids on contracts during a two-year span. SBA also said it was considering increasing the cap to five contract wins.
- Allow native Hawaiian organization-owned firms to win sole-source contracts of any size, as is the rule for ANC and tribally owned firms.
- Establish that the owner of an 8(a) firm must live in the United States.
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Comments to the proposed rule changes will be open for 60 days -- longer than the typical 30-day period -- and must be received on or before Dec. 28.